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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,897	03/25/2002	Juhani Latvakoski	NOKIA.4008US	1451
43829	7590	06/08/2007	EXAMINER	
ROBERT M BAUER, ESQ. LACKENBACH SIEGEL, LLP 1 CHASE ROAD SCARSDALE, NY 10583			JUNG, MIN	
			ART UNIT	PAPER NUMBER
			2616	
			MAIL DATE	DELIVERY MODE
			06/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/980,897

Applicant(s)

LATVAKOSKI, JUHANI

Examiner

Min Jung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26,28-33,35-38 and 42-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26,28-33,35-38 and 42-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 26, 28-33, 35-38, and 42-52 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification uses the term "packet" in a different manner from what is already established as its meaning in the field of the invention. In the specification, page 1, it is stated "examples of packets include user data documents, such as zip files and emails, digitized speech, video and other similar types of data files", and at page 9, it is stated "the size of the packet used in the allocation is the size of the data file generated at the application level, for example that of the original application generated data document". Thus, from these statements, it seems that the "packets" are actually data files and not a bundle of data (i.e., protocol data unit) including a header, payload, and error detection/correction bits, as is the case in the field of the invention. However, it is uncertain what exactly is intended by the usage of the term "packet" in the specification. Therefore, the claims reciting the term "packet" cannot be given a proper interpretation. Usually, a data file would be put into a plurality

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of packets to be transferred. However, it is not known exactly what is intended by the description in the specification. Further, it is questionable whether a variable packet length is intended by the terms "size of the packet".

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 26, 28-33, 35-38, and 42-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

All of the claims are vague and indefinite because the meaning of the term "packet" cannot be determined.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 26, 28-33, 35-38, and 42-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallentin et al., US Patent 6,347,091 (Wallentin).

Wallentin discloses a method and apparatus for dynamically adapting a connection state in a mobile communications system. Regarding the present invention, Wallentin teaches a method for allocating one of a plurality of communication resources

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of communication networks in which information is transferred between a first station and one or more second stations in the form of at least one packet, the method comprising the step of allocating one of the communication resources based on the size of the at least one packet to be transferred, wherein information relating to the size of the at least one packet to be transferred is provided to a network element performing the allocation step. See fig. 4 and 5, and col. 6, line 27 – col. 7, line 8, Fig. 7 and col. 7, line 63 – col. 8, line 36, and Fig. 10, and col. 11, lines 20-53. Specifically, Wallentin teaches, “An optimal channel type may be dynamically/adaptively determined and allocated based on a single, relatively simple parameter such as the amount of data currently stored in a connection queue, i.e., queue length....” (col. 6, lines 46-49). The amount of data in the connection queue reads on the size of the packet. The connection state selector CSS in the RNC would read on the network element performing the allocation step. Wallentin teaches signaling over the radio interface in order to make the connection state change. Wallentin, however, fails to specifically teach transferring the size information as a service primitive, or as an information element of a protocol data unit. Wallentin teaches determining the amount of data stored in a connection queue and using that information in allocating either a common channel or a dedicated channel, and does not specifically say how that information is communicated. The two variations recited simply mean two different ways of communicating the parameter information, name, transferring it as a service primitive parameter, or as information contained in a PDU, both of which are well known in the art. Therefore, it would have been obvious for one of ordinary skill in the art at the time of the invention to implement

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the teaching of Wallentin by adopting either way of transferring the information regarding the amount of data.

Further, Wallentin teaches that if the at least one packet to be transferred is less than a predetermined size, then a common communication channel is allocated for transfer, and if the at least one packet to be transferred is greater than a predetermined size, then a dedicated communication channel is allocated for the transfer (col. 2, line 54 – col. 3, line 10).

Further, Wallentin teaches that there may be two or more associated packets, and that CDMA system is used (col. 2, line 54 – col. 3, line 10, and col. 5, lines 19-25).

Wallentin further teaches different types of services being provided by the disclosed system, including voice services and packet data services including emails, file transfers, and information retrieval using Internet.

Response to Arguments

7. Applicant's arguments filed April 30, 2007 have been fully considered but they are not persuasive.

Applicant's attorney requested another office action because he felt that the examiner's conclusions were erroneous. Office action is not incomplete just because examiner draws conclusion which applicant does not agree with. In the last office action, the ground of rejection was changed, and all the reasoning for the rejection was provided in full. Since applicant's attorney provides argument on the merits of the

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rejection in his letter dated April 30, 2007, the letter was treated as a proper response to the last office action.

Applicant's attorney argues that the present claims recite allocating one of the communication resources based on the size of at least one packet to be transferred, whereas Wallentin only determines the amount of space remaining in each of the queues and uses that parameter. Applicant's attorney argues that Wallentin does not allocate one of the communication resources "based on the size of at least one packet to be transferred" as recited in the claims. Nor is "information relating to the size of the at least one packet to be transferred" provided to a network element in Wallentin performing the allocating step". Wallentin at col. 6, lines 46-49 teaches dynamically/adaptively determining an optimal channel type based on a parameter such as the amount of data currently stored in a connection queue, i.e., queue length. Although queue length is not the same as packet size in a conventional understanding of packets, the meaning of "packets" as disclosed in the present invention covers the concept of queue length because the meaning of "packet" as disclosed in the present specification includes user data documents such as "zip files", "emails", "digitized speech", and "video" (page 1), and teaches that "the size of the packet used in the allocation is the size of the data file generated at the application level" (page 9). Therefore, since the queue length in Wallentin indicates the size of data that need to be transferred, and since Wallentin determines the communication resources (channel type) based on the queue length, Wallentin does allocate one of the communication resources based on the size of at least one packet to be transferred.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Min Jung whose telephone number is 571-272-3127. The examiner can normally be reached on Monday through Friday 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on 571-272-3134. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJ
June 1, 2007


Min Jung
Primary Examiner